CALIFORNIA ★ POLITICAL
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FALL 1995 • VOLUME 6 • NUMBER 4 • $6

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Si Frumkin

Phillip E. Johnson Dissects *Naturalism*
America's Established Religion

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John Kurzweil

Independent
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The $100,000 Club
162 employees
Independent
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It took a court order, but here are the top 25 highest-paid city employees in Huntington Beach
Top 25 paid employees for calendar year 1994 (by total compensation)
CITY EMPLOYEE | SALARY | TOTAL*
James Price, Police Captain $92,231 $174,511
Michael Uberuaga, City Administrator $128,339 $167,143
Ronald Lowenberg, Police Chief $112,595 $155,577
Raymond Silver, Assistant City Administrator $119,519 $153,496
Michael Dolder, Fire Chief $108,179 $152,863
Thomas Poe, Fire Chief Division $88,175 $146,487
Gail Huttton, City Attorney $111,467 $142,563
Guy Burnell, Fire Captain Paramedic $66,347 $137,367
Robert Franz, Chief Administration Services $103,955 $133,753
Ronald Hagan, Director, Community Services $103,955 $133,682
Patrick Gildea, Police Captain
Duane Olson, Fire Battalion Chief
Charles Reynolds, Fire Battalion Chief
Michael Adams, Director
Robert Brown, Fire Captain Paramedic
Barbara Kaiser, Dir. Economic Development
Michael Terich, Fire Battalion Chief
Gary Finney, Fire Paramedic
Gary Durlan, Fire Paramedic $52,728 $128,927
Lynn Foley, Fire Engineer $51,353 $128,498
Edward McErlain, Police Captain $50,687 $128,208
William Mamelli, Police Captain $87,419 $127,723
Luis Ochoa, Police Lieutenant $87,307 $127,349
Mark Bodenbender, Fire Captain Paramedic $77,274 $127,334
Curtis Cope, Police Lieutenant $66,347 $126,5
$78,624 $126,4
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'We're Underpaid!'
by Leon McKinney

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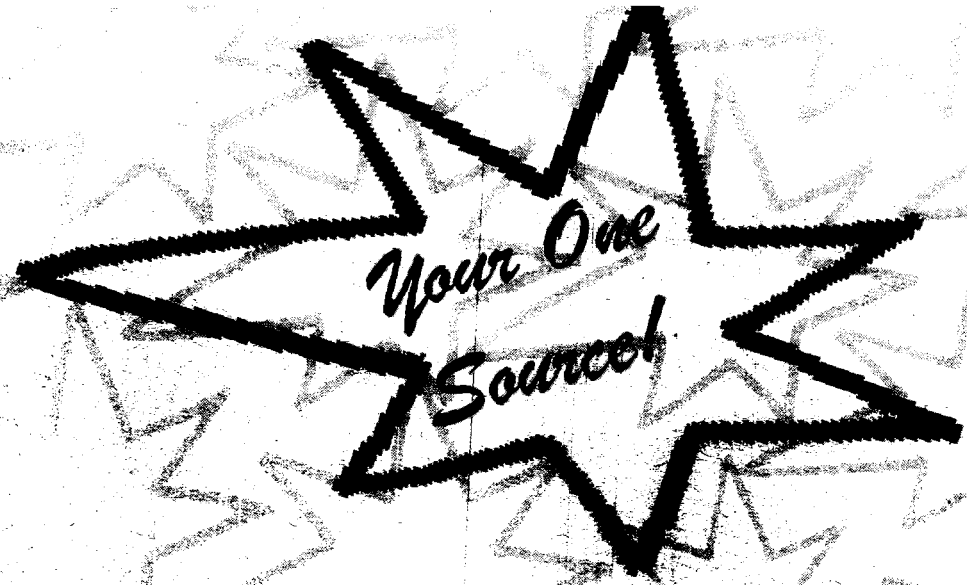

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CALIFORNIA★POLITICAL
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FEATURES

'We're Underpaid!' By Leon McKinney 9

Robert Citron was a product of a local government political environment reeking of arrogance and rampant public employee greed. Herewith, an inspiring tale of local citizens fighting back.

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California's Water Debate.

Republican Class Acts By John Kurzweil 14

Republicans may finally be ready to come out fighting on issues, or at least to make a fair show of it.

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A place where drive-by shootings are unknown, casual murder is rare — and teenagers carry Uzis.

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The existence of a *de facto* established religion is not sinister, but closing our minds to alternatives is.

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CORRESPONDENCE

POOR PIGEON-HOLING

At the risk of sounding ungrateful for your mention of my recent promotion at the *Daily News*, I might suggest that Tim W. Ferguson take a refresher course in the craft of reporting.

His "Working Press" column in the Summer 1995 issue has me pigeonholed as "formerly of the Sacto press corps." Where he got his information is beyond me, for I have never been a reporter in Sacramento (sorry to say, I haven't been to Sacramento in several years).

If he had just called me up, I would have been happy to tell him that I have been at the *Daily News* for nine years — first as business editor, and later, as a financial columnist, before moving over to the editorial pages last December.

I also would have been happy to mention that in terms of editorial policy, we have been — and remain — rooted in conservative principles.

Mark Lacter
***Daily News* editorial pages editor**
Woodland Hills

Tim Ferguson responds in "The Working Press," page 7. — editor

BUREAUCRATIC LIPOSUCTION

Thanks for Tom McClintock's article, "Time for Bureaucratic Liposuction" (*CPR*, Summer). He has a knack for offering in historical context sound contemporary recommendations for much needed improvements in California government. Please feature more of Mr. McClintock's analyses.

Bruce T. Olson
Modesto

It was a pleasure to see another of Tom McClintock's superb hit pieces in the latest issue of *CPR*. His excellent survey of the excesses of bureaucracy is long overdue. Perhaps California needs a "little Grace Commission" to do an analysis in detail on its mal-efficient state government similar to the one done for the federal bureaucracy when Ronald Reagan was president. We hope that a California effort along these lines would not suffer the fate of inaction that befell the Grace Commission's recommendations.

One part of Mr. McClintock's article, however, seemed decidedly at variance with the rest of it. On page 13 in the first paragraph of the section on civil service reform, he says: "the temptation is to blame the bureaucrats. It is also wrong."

I am afraid to say the well-known quote from long-time activist-turned-Republican Eldridge Cleaver, applies to bureaucrats as well: "You're either part of the problem or part of the solution."

It is pretty clear from the facts McClintock himself presents that bureaucrats who are paid two to two-and-a-half times what most Californians earn in the private sector *without* the stress associated with the competitive/incentive dynamic of the private sector, have *no* desire to change a system that grants excessive rewards for minimal work and near life-long job security. To assume otherwise is at least erroneous and at worst could lead to an underestimation of the political efforts needed to effect conservative reforms of bureaucracy and government here in California.

This point aside, I compliment Mr. McClintock on a long overdue and superb overview of the problem of California bureaucracy. It is a shame that the voters of California rejected his bid for state controller last year.

Denis J. Norrington
Daly City

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SACRAMENTO SPECTATOR

'Tis the dog days of Autumn and the Legislature is out of session, so not only is most political action taking place out of town, but there is a paucity of stylish soirees at which your Spectator can Spectate. None the less, the political waters are roiling — but out on the hustings, not here in River City.

New Speaker Brian Setencich is walking on eggs, trying to do the impossible: be a good Republican while at the same time keeping his deal with the Democrats who elected him Speaker. Rather like trying to be both an Orthodox Jew and a Nazi Party official — no matter how much window dressing you put on it, this thing simply can't work.

Setencich is spending the Legislative interim personally visiting Republican Assembly members in their districts. A naturally personable fellow, he is so far charming his fellow GOP legislators. He is also dropping very strong "hints" — not promises mind you, but "hints" — that he plans to "do the right thing by Republicans" when the Legislature re-convenes.

When the Legislature re-convenes in January, Setencich's patron, former Speaker Doris Allen, will have been removed from office via the recall. That election, scheduled for the Tuesday after Thanksgiving, is certain to result in Allen being thrown out of office by her outraged constituents. If, as is likely, she is replaced with a loyal Republican, that puts Setencich in the hot seat.

For if, in addition to Mrs. Allen departing, Brown is elected mayor of San Francisco, Setencich would lack the votes to be elected Speaker by the coalition that handed him gavel in the first place — all Democrats plus himself and Mrs. Allen. So Setencich must deal or face the prospect of Assembly GOP leader Curt Pringle ousting him as Speaker come January.

A convoluted trail, but the bottom line is fairly simple. After all the perfidy and prostitution of Paul Horcher, Doris Allen, and Brian Setencich, it is very likely that in January the "real" Republicans will be able to elect a "real" Republican as Speaker.

If that real Republican Speaker at last is to be Setencich, he will have to double-cross the Democrats who elected him in the first place and convince his fellow Republicans to forgive his double-cross of them that allowed him to be Speaker in the first place.

A difficult, but not impossible task. Curt Pringle and the rest of the loyal Republicans in the Assembly have powerful arguments to use against any accommodation with Setencich. On the other hand, Pringle's talents are largely in the political arena, and the case could be made that the interests of maintaining the GOP majority lies in allowing him to concentrate on next November's elections.

When all is said and done, though, whatever the final decision is, it ought to be made by Pringle and his hearty band of fighters who have stood their ground and successfully opposed Paul Horcher and Doris Allen. It was they who filled the breech when it looked like Willie Brown and his two GOP Quislings would rule the Assembly for a full two years. They suffered the slings and arrows of a hostile media and a small but incredibly arrogant band of Republican hangers-on up here who saw a chance to make a quick buck supporting Horcher and Allen.

Like Prophets without honor in their own land, Pringle and crew kept the faith. January will likely find them able to install as Speaker a Republican who will act and rule like a Republican — at last. Whoever that is, Pringle and crew deserve to make that decision.

— A.P.C.

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A Gaggling Pride

Abolish The State Bar

MARK S. PULLIAM

A GROUP of geese is called a gaggle. A group of monkeys is called a troop. A group of lions is called a pride. What do you call the 146,488 lawyers admitted to practice in California? Some would call them a plague. Others would call them a pestilence. But the real answer is that, whether or not they object, all of California's lawyers are called members of the California State Bar, a mandatory trade union that charges $478 per year in dues.

What do members of this closed shop get in return for their exorbitant dues? (Lawyers in Illinois pay mandatory annual fees of only $170; medical doctors in California pay only $300.) By far the largest portion of the Bar's current dues, accounting for more than $300 of the $478 per year, is spent on attorney discipline. Yet the Bar's attorney discipline system was recently criticized by the Bar's own blue ribbon "Alarcon Committee" as extravagant, wasteful, and inefficient. Nevertheless, the State Bar continues to exist as a state-sponsored monopoly that can fund its $56 million a year operations through involuntary dues.

It is widely expected the Legislature may disband the mandatory Bar if a large majority of its members vote in favor of doing so.

That may change, soon. On October 12, Governor Pete Wilson signed into law S.B. 60, a bipartisan bill sponsored by Sen. Quentin Kopp (I-S.F.). The law requires the state Bar to conduct a plebiscite of all its nearly 118,000 active members, asking them this question: "Shall the state Bar be abolished as the agency regulating lawyers in this state on behalf of the Legislature and Supreme Court, with its regulatory functions turned over to another body or bodies and some or all of its other activities handled by a voluntary bar association or associations?" The state Bar must report its members' answer to this question to the Legislature by July 1, 1996.

Since the "unified" or mandatory state Bar was created by the Legislature in 1927, no one has ever asked its members this question. Why has the Bar refused to poll its members on this fundamental issue for 69 years, and why did it actively oppose S.B. 60? The answer, as the Bar leadership knows well, is that most lawyers would not choose to pay the outrageous Bar dues they are required to pay.

IN ADDITION to dissatisfaction with its cost, some lawyers are displeased with the Bar's political positions (which have resulted in a long-running lawsuit over the amount of mandatory dues to be rebated to objecting members). A recent editorial in *California Litigation,* the official publication of the state Bar's Litigation Section, blasting civil justice reform should lay to rest any remaining doubts regarding the state Bar's political agenda. Repeating verbatim a tendentious set of "talking points" prepared by the California Trial Lawyers Association, the editorial derided pending reform proposals as infected by "special interest groups," based on "emotion rather than reason," and advanced by "ignorant politicians" who would "emasculate our system of justice." The editorial went so far as to describe some of the proposals as

---

Mark S. Pulliam, California Political Review's *legal issues correspondent, is an attorney in private practice in San Diego.*

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EDITORIAL

AN ISSUE OF CRIME, NOT RACE

"Travesty," shouted The Weekly Standard on the cover of its "O.J." issue, a sentiment with which much of California agreed. The weird, but predictable, O.J. verdict marks a turning point: people now begin to see that the serious political point at issue is much less race than law and order, that the now-long-simmering issue of the LAPD — launched with a bang the night the Rodney King video tape first appeared on television — is essentially another assault on law enforcement by the old liberal-left war horses who blame society, not criminals, for crime, ignoring crime victims in the process.

An indication people are realizing increasingly that crime, not race, is the genuine issue here is the December Welcome Home celebration sponsored by the Washington-based Legal Affairs Council for LAPD Officer Laurence Powell, who, along with Stacy Koon, has languished in prison more than two years on federal charges of "violating Rodney King's civil rights" even though both officers were declared not guilty in state court. L.A. County Supervisor Michael Antonovich has shown considerable courage, and taken much flak, for agreeing to host the Powell release party.

The Los Angeles Times, the Los Angeles Daily News, various radio talk hosts, and other newspapers have objected, sometimes vehemently, on grounds the event will stir racial conflict and needlessly re-open old wounds. But the unstated premise is that Powell and Koon deserved what they got, a premise that is demonstrably false. Actually, what the Times called the "horrific police beating of Rodney G. King" is a media-created myth: an out-of-control, racist LAPD mob

beat a helpless black man to a pulp because they thought no one was looking. The truth contradicts the myth on every count.

First, the police followed established LAPD procedure, as they were bound to do.

Second, they had already peaceably handcuffed King's two passengers who, like King, were black but who, unlike King, had not resisted.

Third, the only law enforcement officer on the scene who might have been at all "out of control" was CHP Officer Melanie Singer who approached King first carrying a drawn gun. Recognizing that the situation did not call for such deadly force, the LAPD ordered her to back off, quite possibly saving King's life.

Fourth, King was then "swarmed" — four officers grabbed his arms and legs — and King, not at all helpless, threw off all four. He then absorbed two 50,000-volt shots from a police TASER gun (one shot can bring down an adult bison). King ignored repeated police commands that he lie prone and allow himself to be handcuffed. Twice he rose up and advanced upon the officers.

Fifth, after the swarm and the TASER failed, the police, who had no way of knowing whether or not King was armed, used their batons, but only when King tried to get up or move on them. When he lay down, no one struck him.

Sixth, at the hospital after his arrest, King was mentally alert and did not complain of pain. The doctor's examination revealed only minor injuries. Later, X-rays showed a fractured right cheekbone (three times King fell — was not pushed — face-first into the pavement) and a small fracture in his right leg.

That's what happened, without the media distortions. Officer Laurence Powell did his duty in a dangerous situation as part of his too often thankless job of defending all of us against criminals.

Supervisor Michael Antonovich and The Legal Affairs Council are to be commended for thus helping honor Officer Powell. CPR

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"sinister," and called for readers of *California Litigation* — whose subscribers include both plaintiffs' and defense lawyers — to write letters to their elected representatives that oppose civil justice reform. The organized bar, at both the national (American Bar Association) and local level, is also fervently opposed to reduced funding for the Legal Services Corporation, which among other things uses taxpayer funds to litigate against welfare reform. The state Bar is, let's face it, a trade union for lawyers. Litigation is good for lawyers, so the state Bar supports the *status quo.*

FOR A variety of reasons, the Bar is held in disdain by many of its members, as well as by the general public. A "Commission on the Future of the Legal Profession and the State Bar" created in 1993, even though it was loaded with Bar insiders, issued a badly-split Final Report in April 1995 in which 8 of 21 members advocated abolition of the mandatory bar. The final vote to maintain the *status quo* was a shaky 13-to-8. A dissenting "minority report" supported abolishing the mandatory bar and transferring administration of attorney admission to practice in California and discipline to the California Supreme Court (funded by mandatory fees paid by attorneys). The report cited, among others, the following reasons:

> Bar dues are too high because (a) the Bar has become a bloated, inefficient bureaucracy, and (b) the Bar spends money on activities most members do not either need or support; and if given a choice, most members would not fund these activities with their dues.
>
> The Bar is unresponsive to its members' concerns and often treats its members in a high-handed manner.
>
> The Bar does not provide satisfactory value to its members.

MOREOVER, THE minority report concluded that the public distrusts an attorney discipline system run by and for attorneys. Transferring this function to the Supreme Court could improve the public's perception of the legal profession. Public confidence in the legal profession is at a critically low ebb. A recent issue of The American Enterprise Institute's *American Enterprise* magazine reported that "[a]ll three of the major polls measuring confidence in professions show a sharp drop in lawyers' recent standing. In the Harris surveys, law firms rank last among institutions whose leaders people have confidence in," even lower than the news media.

Despite considerable dissatisfaction with the *status quo* among practicing lawyers, there is little *organized* opposition to entrenched Bar leadership. This is due to a combination of poor communications (to its dismay *CPR* continues to have the "scoop" on this important story) and the dynamics of interest group politics: the few who are enriched and empowered through existing political arrangements will always have a greater stake, man for man, in seeing that those arrangements remain as they are than will the individuals who make up the much larger group carrying the burden. Moreover, the Bar leadership can dictate the timing of the plebiscite (S.B. 60's proponents tried unsuccessfully to require that the plebiscite ballot be mailed out *with* members' dues renewal invoices). Thus, it is impossible to predict how California attorneys will respond when the vote is taken. One thing is sure — the Bar leadership will be working hard (and using its members' dues) to campaign for the "closed shop." Although the plebiscite is not legally binding, it is widely expected that the Legislature may disband the mandatory Bar if a large majority of its members vote in favor of doing so. A voluntary Bar not responsible for admissions and discipline would continue to exist, so long as it offered services members were willing to pay for.

VOLUNTARY BAR associations, like charitable, fraternal, and civic organizations, have to compete with each other and demonstrate good "value" to members in return for the cost of dues. The ABA is voluntary: its members can resign if the organization takes fringe political positions or charges excessive dues. State Bar members should have the same rights.

Society has a stake in this issue as well. Richard Epstein points out in the opening chapter of his recent book, *Simple Rules for a Complex World,* entitled "Too Many Lawyers, Too Much Law," that "[b]etween 1960 and 1985 the population of the United States grew by 30 percent, while the number of lawyers increased by 130 percent." The percentage of lawyers to the total population has increased from 1.3 per thousand (where it had held roughly constant from 1900 to 1970) to 3.0 per thousand in 1990. The percentage is still climbing. The percentage of U.S. gross domestic product devoted to direct legal expenditures increased from 0.6 percent in 1960 to 1.4 percent in 1987. Epstein argues rightly that the current public antipathy toward lawyers "is born of both resentment and impotence ... about the rising influence of lawyers throughout the land." Defunding a $56 million-a-year trade union for lawyers would be a good first step in addressing the problem. CPR

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Convincing Mr. *Chutzpah*

BY TIM W. FERGUSON

SHORTLY BEFORE Pete Wilson packed it in, the *Los Angeles Times* identified an Iowa pol, the state senate majority leader there, who actually was enthusiastic about the governor's bid. This was a rare citing of anyone outside of Dan Schnur, Donald Bren, and William Weld who truly wanted Pete to run for president. This groundswell of at least four convinced Mr. Chutzpah that he had a "duty" to shirk his pledge to the voters of California to serve out the term he had just been given. But then, much more quickly than it began, the Wilson for President race was over — surely one of the strangest campaigns in recent American politics.

The press, though it was appropriately if belatedly hard-nosed about Wilson's broken promise, did not do an adequate job of exposing what a deficit-ridden effort this was. When all the big talk about big donations went poof in the final weeks of the Wilson drive, Californians could only be surprised. They'd been told so many times about the governor's prodigious fund-raising ability. In the end, all he had in his pocket were IOUs. Much like the one he gave to the state's voters last fall.

THAT SAID, the right can take heart in some of Wilson's latest policy jags. The *Los Angeles Times* reported he's readying a privatization initiative "potentially leading to a massive transfer of tax revenue and workers out of state government." Robert Poole at the Reason Foundation in L.A., which is Privatization Central, could have told the *Times* that economist Phil Romero and others from the governor's staff pursued this in the first Wilson administration but the project got shelved (and the public payroll kept growing). It's encouraging that this has a history and is not just another issue *du jour* with Pete. Please forget how he supposedly had cut government to the bone before agreeing to the 1991 tax increase. Ever since, that bone has yielded more fatty tissue each year. Now, in his revolutionary stage, Wilson is patterning himself closely on his buddy Governor Weld, who has just unveiled a privatization scheme for Massachusetts.

Perhaps related to this labor-cost review of state government, Wilson has also finally moved to break the "prevailing wage" hold that the unions have had on government tasks such as highway maintenance. As Tom McClintock in his Assembly days was fond of pointing out to a then-uninterested Governor Wilson, it doesn't make sense to have repair flagmen making more than the truck drivers whizzing past them. Of course, legislative Democrats will have nothing of true reform, but with Wilson's blessing, the prospect of an initiative to address the stranglehold of public employees on fiscal management becomes more real. (Any bets on Republicans including police, fire, and prison guards in their sweep?)

Meantime, in the private sector, Wilson has taken up wage-and-hour rules that make California a hard place to operate a business that requires flexible scheduling. Add the tangible advances already made against permit delays, worker-comp abuse, and petty taxation, and throw in some meaningful changes in wrongful-termination and unemployment-benefits law now being cooked up, and this state could be cost-competitive if we're not careful. And what if one or more of the anti-lawsuit initiatives passes next March and if Pete hangs tough for a 15 percent income-tax cut? Hold the presses, we'll have a story on our hands!

DESPITE THE Howdy Doody show in the Assembly, good turns in public policy were beginning to

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Tim W. Ferguson is California Political Review's *press critic.*

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happen there on close votes. If this continues, perhaps the press will opt to tell us more about the Stealth Vader thwarting change in state government on behalf of the old interest groups — Bill Lockyer. The public grew to know and appreciate Willie Brown, but it's unlikely that one in 10 knows much about Lockyer and his loyalties. If more did, the GOP might not lose state Senate races it should have won, like the one against Ralph Dills in 1994. Constituents in his L.A. County beach district might not appreciate that Dills, *via* Lockyer, keeps the unions and the trial lawyers in the catbird's seat.

SOMEONE ASKED me recently for a description of the politics of the *San Diego Union-Tribune.* The answer isn't easy. Its editorial page is generally establishment-conservative, although it holds out for school vouchers. Its news pages are the usual implict statism of the journalism fraternity. Sacramento bureau chief Ed Mendel is capable of a good tale of backroom deal-brokering. His colleague Dana Wilkie too often wastes her columns on effluvia such as Doris Allen vs. the short penises. But the paper was to be praised for tough-minded coverage of the Wilson presidential fiasco, something that homers like the *Boston Globe* weren't able to muster when their favorite son was running. (Its op-ed page did give in to a September 14 laugher by the chronically-lame Christopher Matthews of the *San Francisco Examiner,* "Don't count Pete Wilson out yet." He must have been tapping another shopworn Washington hand, Bill Schneider of CNN and — grit your teeth — the American Enterprise Institute. Schneider also saw Wilson rallying to the last.) In total, the *Union-Tribune* is a rather serious and rather dull chronicler of state politics ("Delta canal called vital to state in future," read a fall headline). But it at least gives respectable play and space to the Sacramento debate. It is easy to find worse.

YOU KNEW we would get to the *Los Angeles Times.* The gray porpoise wept for days on end about the terminations due Los Angeles County employees because the government there spent itself into the poor house. Ditto the *Orange County Register's* fixation on the public payroll's fate in that jurisdiction's bankruptcy workout (without new taxes!). The implication is that some terrible tragedy takes place every time a civil servant loses a job, whereas private-sector workers are laid off all the time with little or no notice in the papers. All this shows is that reporters remain captives of the people they spend too much time covering.

ROBERT SCHEER of the *Times* went on a special Halloween rant with an op-ed "Who Is Left to Fight for the Poor?" He singled out Dianne Feinstein, Barbara Boxer, and NOW for turning their backs on "federal poverty programs, which keep 14 million women and their children alive." Feinstein took a special hit for suggesting that some Great Society artifacts encourage dependency: "This from a senator who never had to work a day in her life until she decided to get on the public payroll. She's dependent all right, on rich parents and husbands who have bankrolled her political career." Hell hath no fury like a leftie deserted.

IF THERE was anything worse than the daily *Sturm und Drang* of the OJ trial coverage, it was the orgy of published tears — especially in the *SF Examiner* — on the passing of wasto laureate Jerry Garcia. Good grief!

WILL SOMEONE please start a Mariana Pfaelzer watch, checking off the days this federal judge has kept Proposition 187 hostage?

LIKE ANY good editorialist, Mark Lacter of the *Los Angeles Daily News* likes nothing better than sinking the knife in a prone target and twisting it ever so excruciatingly. (See "Correspondence," this issue.) *Touche!*

And by way of an apology, let us note the *Daily News's* hard line against the quota politics of L.A. city government, which now impinge on free speech. Would-be appointees of Mayor Richard Riordan had best not harbor doubts about affirmative action that are unacceptable to the race hustlers of the city council majority. Maybe Mr. Riordan with the help of the *Daily News* could do something to change that majority? CPR

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Independent
HUNTINGTON BEACH FOUNTAIN VALLEY • SUNSET BEACH
What they don't want you to know
It took a court order, but here are the top 25 highest-paid city employees in Huntington Beach
Top 25 paid employees for calendar
(by total compensation)
CITY EMPLOYEE
James Price, Police Captain $92,231 $174,511
Michael Uberuaga, City Administrator $128,339 $167,143
Ronald Lowenberg, Police Chief $112,595 $155,577
Raymond Silver, Assistant City Administrator $119,519 $153,496
Michael Dolder, Fire Chief $108,179 $152,863
Thomas Poe, Fire Chief Division $88,175
Gail Hutton, City Attorney $111,467
Guy Burnell, Fire Captain Param dic $66,347
Robert Franz, Chief Administration Services $103,955
Ronald Hagan, Director, Community Services $79,420 $132,629
Patrick Gildea, Police Captain $78,619 $131,001
Duane Olson, Fire Battalion Chief $77,426 $130,428
Charles Reynolds, Fire Battalion Chief $103,955 $129,683
Michael Adams, Director Special Projects $59,742 $129,443
Robert Brown, Fire Captain Paramedics $103,955 $128,927
Barbara Kaiser, Dir. Economic Development $79,097 $128,498
Michael Terich, Fire Battalion Chief $52,728
Gary Finney, Fire Paramedic
CITY EMPLOYEE BENEFITS
IN THE NEWS
BANDING TOGETHER
The Fountain Valley High School band, including Catherine Do on baritone, gears up for the year with its version of "Hell Week."
SEE STORY PAGE 10
BIG RED
Huntington Beach firefighters are showing off their shiny new truck — a $750,000 vehicle billed as state-of-the-art.
SEE STORY PAGE 6
CALMER WATERS?
The Waterfront Hilton settles its bankruptcy case and looks forward to moving ahead with redevelopment plans.

'We're Underpaid!'

Can't Fight City Hall? Don't Tell That to the CBI

Leon McKinney

ORANGE COUNTY'S fiscal collapse is now almost exclusively associated with former County Treasurer Robert Citron's "creative" investment policies — and, Lord knows, plenty of reason exists for the association (see my article "Routing the Knaves: Orange County Votes Down Measure R," *CPR*, Summer, 1995). But there is more to the story. True, Citron did dream up unique ways to create fiscal meltdown, but he could do what he did only because Orange County's local government political environment reeks of arrogance and unreality, of unconcern for taxpayers and rampant public employee greed.

Take the city of Huntington Beach, for instance, which recently released a list of its 25 highest-compensated employees — not willingly, of course, but only after a drawn-out battle ending in a court order. The list explodes the myth of the struggling "underpaid" civil servant Orange Countyans have been hearing about for years. This list tells a lot, but the fight to get it made public tells even more. I'll begin at the beginning.

Early in 1994, some Huntington Beach residents, including me, formed a watchdog group called the Citizens' Bureau of Investigation (CBI). We had learned that a line item on the Huntington Beach residential property tax bill — labeled "HT BCH CITY

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DEBT" — was actually gathering money for something very different. Public employee pensions in California are administered through the California Public Employees Retirement System (CALPERS). Normally, contributions to the pension fund come half from public employees and half from their employer — the school district, city, county, whatever. But in Huntington Beach employee unions convinced the city to contribute *all* the money, which in effect amounts to a tax-free pay raise of roughly 8 percent (10 percent for public safety personnel whose careers tend to be shorter, and whose pension contributions consequently are slightly higher, than those of other public employees). The city paid for the raise by increasing the property tax rate and tried to avert a taxpayer furor by deliberately mislabeling it. In the private sector, this sort of thing is considered fraud.

While digging into this hidden money grab, we found another. City employees were "spiking" their pensions: artificially inflating the value of their final year's compensation in order to boost their monthly pension payments proportionally for the rest of their lives. We learned that 154 city employees, including 100 members of the police force, were engaged in this additional raid on tax dollars. The City Council found itself under considerable public pressure to remedy the situation as a result of protests, led by CBI, at council meetings and press reports detailing these rip-offs. Also, the "spiking" gambit threatened to create a net loss for the pension system of $10 million that CALPERS would not cover, leaving the city to gouge that much more if it could find a way to do so. Instead, the council revoked pension spiking. This so infuriated the police union that some 100 police spikers threatened to file individual $1 million lawsuits against the city, the council, individual members of CBI, and other citizen activists. In the private sector, this sort of thing is considered extortion: "pay $10 million now, or we'll sue for $100 million." It didn't work. Spiking was phased out and the 100 lawsuits were not filed.

INSTEAD, A public relations campaign was launched portraying public employees, especially the police, as shamefully "underpaid." Skeptical CBI members took a look at city contracts and discovered the average Huntington Beach police officer's compensation — base salary plus estimated overtime and allowances for education, uniforms, and, for some, cars, *and* the employee pension contribution that the city was paying — came to just over $80,000. And there's more: life insurance, 12 weeks of sick leave, $7,812 in medical, dental, and eye care. Altogether, we found that Huntington Beach probably pays around $100,000 for each officer, a definition of "underpaid" the vast majority of private citizens whose taxes finance these bloated contracts can only dream of achieving.

The unions responded saying these compensation estimates, derived from aggregate public spending figures and public employee contract provisions, were wrong and inflated, that public employees were actually receiving much less. Fair enough. The truth, I thought, should be easy to find. I asked the city personnel department to provide the actual compensation information. (This was still early in 1994, more

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than 20 months ago.) If the figures showed that CBI's estimates over-stated public compensation, public employees should be the first to demand that they be made public. But, unsurprisingly, the city personnel department gave me the run-around.

Next, in early May, I tried an approach I had used successfully two years earlier to learn the pay levels received by employees of the Huntington Beach Union High School District. I wrote the city attorney requesting a listing of employees, by name, with the total compensation for 1993 as stated in Box 1 of the W-2 forms submitted by the city to state and federal tax authorities. On June 3, City Attorney Gail Hutton sent me a copy of a memo she had prepared for the City Council denying my request on grounds that releasing the information would violate city employees' privacy rights and citing court decisions and state laws in support of her denial. She threw in a report on how much time and money my request had cost the city implying, amazingly, that she considered it all a shameful waste of city tax dollars.

The city secretly negotiated with police and firefighters unions, increasing pay available for pension spiking. Somehow these agreements were not filed with the city clerk ... they turned up in a storage cabinet in the city vehicle maintenance depot.

But I noticed that some of the laws and court rulings Hutton relied upon as justification were almost 20 years old. Many had been overturned by more recently enacted laws, such as California's Public Records Act, and court rulings. In other words, Hutton's justification was full of holes. As the elected official charged under California law with the duty of providing the city the best possible legal advice and representation, Hutton had provided grounds for her own removal and possible prosecution.

I THEN approached the editors of the *Huntington Beach Independent* and suggested they request the employee compensation information. Hutton told them to get lost, too. But the *Independent* is owned by the *Los Angeles Times* and the *Times,* at that juncture, was eager to prove it could out-report the *Orange County Register* on local news. *Times* lawyers agreed with my interpretation of the law and filed suit to force the city to release the data. One year (and $12,000 in legal expenses for the *Independent)* later, a Superior Court judge told the city to cough up the data *and* to reimburse the *Independent's* legal costs. Of course, in this heads-I-win, tails-you-lose game, Hutton and her staff won't personally lose a dime for stubbornly trying to keep city taxpayers in the dark — the *taxpayers* will be stuck with the tab. Business-as-usual for our selfless public servants.

Actually, what the *Independent* had requested and received was a list of Huntington Beach's 25 highest-compensated employees (see this issue's front cover). Examining the list it is easy to see why everyone at City Hall wanted it hushed up. Eighteen out of the top 25 — all receiving at least $126,000 — are police, fire, or paramedic employees.

AT THE head of the class was Ray Price, a police captain who retired at the end of 1994. Captain Price's total compensation last year was $174,511: $92,232 salary; $4,200 car allowance; $106 overtime; $7,147 in "special pay" (bilingual pay bonus, "education incentive," etc.); $15,962 and $24,830 for cashing in unused sick leave and vacation leave; $21,805 paid to his account with CALPERS by the city, er, taxpayers (including $8,625 which, in other cities, he would pay himself); $7,528 in taxpayer-provided life and health insurance premiums; and, finally, a $700 uniform allowance.

Captain Price also benefited substantially from the generous method used to calculate public employee pensions. In the private sector, pension payments are usually determined by the employee's salary during their last year or last 3-to-5 years on the job. But under the "spiked" pension arrangement that still applies in Price's case (but will not for city employees retiring in the future) all sorts of extra goodies were added in calculating the value of his pension. Thus, the figure employed was not his base salary of $92,232, but a greater amount, possibly as much as $153,803. For instance, if he retired, say, after 30 years, at age 55, according to CALPERS tables, he would receive 67.5 percent of his "final compensation." Based on his final salary, his pension would be $62,257 annually. But based on "final compensation" of $153,803, it balloons up nicely to $103,817 — $11,000 more than base salary at retirement. And, by the way, the $103,817 will be adjusted for inflation.

City Administrator Michael Uberuaga was second,

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with a base salary of $128,340 and a total compensation package of $167,144. The police chief — total compensation $155,577 — placed third, followed by the assistant city administrator at $153,496 and two fire chiefs at $152,864 and $146,487. Gail Hutton came in seventh at $142,564.

So much for the "underpaid" city employee line. The whole system is rife with smoke-bombs, trapdoors, and blind alleys designed to deceive the public. In 1988, for instance, the deputy city administrator secretly negotiated with the police and firefighters unions, increasing the amount of vacation pay that could be used for pension spiking. But somehow these two side agreements were not filed with the city clerk as required by law. Instead they turned up in a storage cabinet in the city vehicle maintenance depot. How many more of these little goodies are hidden away?

Perhaps the most remarkable and disturbing part of the story is the near complete absence of shame or remorse among our public servants even when all the gouging, greed, deceit, and denial is exposed. The release of the Top 25 list has not caused city employee unions to miss a beat in their constant litany: we are overworked, underpaid, unloved, etc. Police union President Richard Wright reacted by insisting that *any* comparison of police officers' pay to the private sector is meaningless. That was consistent with last year, when he told me it's "impossible" to pay police officers too much for the job they do. "How about a million bucks a year?" I asked in reply. He did not answer; perhaps he was busy calculating the pension implications.

It's also worth pointing out that while Huntington Beach police are second in compensation among Orange County's 31 cities, California Department of Justice crime statistics rank Huntington Beach 16th in that list of 31.

NOTHING SEEMS to shame these people. As part of their counterattack, for instance, two police officers filed a lawsuit against CBI leaders Bill Mello and Jim Bridges, persistent critics of employee union contracts, for "defamation and interference with employment" (Orange County Superior Court, Case No. 735 699). I believe Officer Wright and his union were almost certainly behind it. For one thing, the two policemens' attorney was Gregory H. Petersen, who also represents the police union.

Barbara Lichman, counsel for Mello and Bridges, argued that the police officers' lawsuit was a SLAPP, a Strategic Lawsuit Against Public Participation. SLAPPs, filed by powerful, deep-pockets individuals or organizations, and sometimes by government agencies, to silence criticism in public forums, have been ruled to violate First Amendment and other constitutional rights under U.S. Code, Volume 42, Section 1983. HUD dropped its attempt to muzzle the "Berkeley Three" when the agency learned it was wide-open to civil rights lawsuits. California has enacted anti-SLAPP legislation that says SLAPPs are to be dismissed during pre-trial proceedings. It also allows for sanctions against SLAPP plaintiffs' attorneys.

Lichman convinced Superior Court Judge Randell L. Wilkinson: on May 25 he granted Lichman's motion to dismiss the police officers' suit according to California Civil Procedure 426.15. Mello and Bridges have now filed a countersuit against the two officers alleging their civil rights were violated.

FOLLOWING RELEASE of the Top 25 list, the *Register* and the *Times* demanded similar information from the other 30 cities in Orange County and from the county itself. In almost every case, city administrators refused to release until the court order was thrust in their faces. The *Independent* also followed up by forcing the release of a list of all Huntington Beach employees receiving more than $100,000 in pay and benefits. Employees belonging to what the *Independent* called "The $100,000 Club" numbered 162 — 15 percent of the total work force. The *Independent's* letters pages were swamped by readers outraged at the excessive compensation.

And even those *not* in the "$100,000" public employee club are doing very well. The president of Huntington Beach's 440-member municipal employees union, for instance, is a senior mechanic. He receives $59,200 in pay and another $9,300 in benefits. In contrast, February 1995 U.S. Department of Labor statistics show that comparable private sector mechanics in Orange County receive $48,227 in pay *and* benefits. The union president's total compensation is 42 percent higher.

Politicians take note: extravagant pay for public employees is no longer a secret. The political benefits of lavishing tax dollars on unions must now be weighed against the possibility of being booted from office by voters grown skeptical of glossy union-financed campaign mailers. Let's take this opportunity to start cutting the unions down to size. CPR

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Liquidity Crisis

California's Water Debate

William R. Allen

WATER IS a liquid asset. And it is scarce: we don't have all we want. For many, *scarcity* means *shortage.* So we are told that we must now act appropriately or gasoline shortages of yesteryear will pale in comparison with future shortages of water. Drought, population growth, industrial expansion, pollution, increasingly thirsty appliances — all supposedly are disastrously gulping our limited fresh water.

A common bureaucratic approach to scarcity is to wonder simply how to get more. In the case of water, rain dances are a possibility, but — with due respect to Native Americans — this does not strike many as highly promising. We might try to salvage more of the river water which now runs off into the sea, but those concerned with fisheries and environment fear the consequences of still heavier tampering with nature. We might invest more in desalination plants to produce fresh water from the ocean, but such water costs perhaps 10 times as much as current supplies. And importing water from places as distant as Canada would be even more expensive.

If we are not to go far in increasing water *supply,* perhaps we can cut water *consumption* and improve the efficiency of *use* of the water we have. Some want water police to implement controls and decrees, prohibiting ornamental and golf course use of water, unrequested serving of water in restaurants, use of hoses in cleaning driveways and automobiles, and dampening construction sites to keep down dust.

We need not surrender to officious officials the right to choose acceptable uses of water. Freedom of individual choice is compatible with — and, indeed, required for — socially efficient use of a scarce resource, with people paying and receiving market-clearing prices. If water becomes more scarce, its *market-clearing* price will rise; individuals would then use less water. But they would decide for themselves the extent to which water uses are not worth the higher price, and the quantity of water demanded would fall to equal the supply available.

A "shortage" of *anything* occurs *only* because people demand more than is available at the *existing price.* With market-clearing prices, water can be put to its best uses and rationed in accordance with community valuations. This will entail correcting the current massive subsidization of agriculture, which, according to the *New York Times,* consumes 85 percent of California's water while producing less than five percent of the state's income. Urban residents pay some 200 times as high a price for water as do irrigation districts. We cannot afford to continue to make it economically feasible to grow monsoon crops in a virtual desert. We cannot afford federal and local laws which make it illegal for some areas to sell excess water to other areas which want to buy it. We cannot afford, in short, to perpetuate a staggering subsidization of waste.

IF CALIFORNIA'S farmers used just 10 percent less water, enough additional water would be available to everyone else, says the *Times,* "for decades of urban growth with some left over to restore the plundered salmon streams and wetlands."

The problem of sensible water use is more economic than technological, but economics is commonly omitted from both diagnosis and prescription. The major, most fundamental water problem in California is not inadequate water. We *can* prosper with what we have. The problem is that we do not distribute and use what we have as well as we could if we were to make our water decisions through the devices and procedures of a freely flowing water market. CPR

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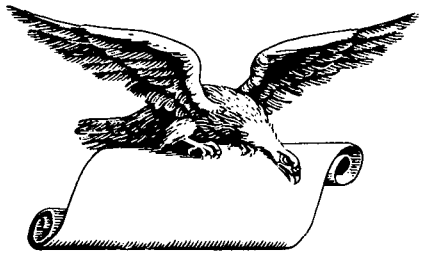
A CONTRACT AT LAST?



Republican Class Acts

BY JOHN KURZWEIL

LEGISLATIVE REPUBLICANS may finally be ready to come out fighting on issues, or at least to make a fair show of it. A group of GOP Assemblymembers, at the direction of Republican Leader Curt Pringle, has been working at preparing a set of legislative objectives to keynote the new session beginning in January and, they and many other Republicans hope, set the tone for the election season. The effort might turn out to be more show than substance, and not even much show at that — no decision has been made, for instance, on whether or not to call the finished product a "Contract With California." Focus group tests around the state will determine the particular banner this "Contract" flies under, not an entirely reassuring indication of the leadership resolve fueling the project.

Still, compared to the gaping policy agenda vacuum revealed once the dust settled *last* November, even the preparation of a set of clear policy goals, whatever they're called, marks progress. And just as the best way Republicans could have put Willie Brown and Paul Horcher on the defensive (and headed off Doris Allen) a year ago would have been to focus on issues, so the best way to marginalize Brian Setencich and his no-constituency (except Democrats) grab for power now is to frame the issue squarely: Brian against the people of California. Republicans can do that by making a highly-publicized demonstration of determination to pass the regulatory, tax, privatization, education, civil justice, and other reforms California desperately needs to allow it to reverse course. Then let Mr. Setencich explain why it should all be junked in favor of allowing him to go on posing as a Republican Speaker while Democrats retain an Assembly veto-power the voters *thought* they had ended last November.

Belying the notion that 1995's War of the Speakership Succession was largely a wasted exercise in petty ego indulgence, this move to put together a coherent legislative program shows Republicans have grown up somewhat as a result of the debacle, which is what wise men and women use debacles to do. Obviously a caucus *sans* Paul Horcher and Doris Allen can't help but be decidedly improved. Beyond that, however, too little interest and appreciation has been given the genuine courage and fortitude shown last summer by most Assembly Republicans in withstanding the enormous pressures exerted on them by Willie Brown (through his puppet, Speaker Allen) to sell out.

ON THE question of staff, for instance, imagine yourself a brand new freshman Assemblyman whose staff members — people you've hired, in many cases coaxing them away from other jobs, perhaps even persuading them to sell homes, uproot their families, and move to Sacramento into new houses with large mortgages — begin appearing daily at your door asking how they are going to survive after Doris Allen has them fired and they lose their homes just because *you* won't unbend a little and take that plum committee chairmanship she's offered you.) Only Setencich fell

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for it completely. Had many more Republicans similarly failed to hold onto their honor, Madcap Allen would probably have gone down in any case, but some sort of emasculated Vichy Speakership, Republican in little more than name, would have been irremovably established through at least 1996 and possibly beyond that. Instead, this demonstration of principled selflessness promises much better times in the future if these class acts can take real control of the Legislature's lower house. Meanwhile, the media — what else is new? — missed this part of the story completely.

THE SIX-MEMBER task force working toward a 1996 Assembly GOP policy agenda is chaired by freshman Assemblyman Keith Olberg of Victorville. Its members include Howard Kaloogian (Carlsbad), Steve Baldwin (La Mesa), Paula Boland (Granada Hills), George House (Modesto), and Tom Woods Jr. (Redding). Olberg wants this core group to work in concert with the full caucus to achieve unified support for a final product. Unanimous support of the full agenda is probably impossible, and, of course, any hint of dissention will be played as a major embarrassment in the press. Any Republican showing the least timidity about over-turning the tables of the buyers and sellers and money changers in the Capitol will find himself instantly hailed a voice of reason in a house gone mad, an oasis of integrity in an ethical desert, a Profile in Courage alongside whimpering cowards — it worked with Doris; maybe it will again. Somebody might be dumb enough ....

The real problem is that most reporters still cannot conceive of Republicans actually running the state, much less achieving a significant change in the direction of government. Therefore many will continue to pigeon-hole their stories, emphasizing the "GOP stumbles again" or "Republican moderates restrain their over-zealous cavemen colleagues once more" angles whenever possible. Republicans would be wise to ignore the phenomenon, especially in the early months of the new year.

Not that Republicans can succeed merely by throwing together a wish list with no reference at all to the priorities of the people of California. In one sense, the whole idea of a contract is to reaffirm that the *people* are sovereign, implicitly rejecting the special interest and ideological arrogance of Willie Brown, the self-proclaimed "Ayatollah" of California politics. On the other hand, representatives are elected to lead, not blow with the wind. Altogether, it's a complicated task, but not the mission impossible its opponents will presumably make it out to be.

And anyway, there are some no-brainers to begin with. One that would be wildly popular with everyone except the special interests that for years have been siphoning off vast quantities of tax dollars was proposed last year by Assemblyman Brooks Firestone: a full-scale audit of how the Assembly has been spending our money. During an interview at the recent GOP state convention, Assemblyman Olberg recalled Willie Brown's reaction to Firestone's audit idea: "It was something to the effect that it would take five years before we would catch up with what he had done with the state's money .... If that's the attitude, number one, it's reprehensible and, number two, it suggests it is worth hiring somebody qualified" to go to work on the audit *pronto*.

Like the national Republican "Contract," the emerging California document includes an initial set of proposals for reforming the way the Assembly works, such as Firestone's audit. These procedural reforms not only will facilitate the enactment of broader policy reforms later on, they also make the clear point that *government* is the problem.

In this vein, Assemblyman Jim Rogan has proposed limiting the number of bills individual members can introduce. "Is California in such bad shape," Olberg asked, "that you need five or six *thousand* new bills introduced every year? I don't think so." This daunting crush of legislation cannot possibly reflect the broad concerns of large numbers of Californians. On the other hand, there probably *can't* be too many bills if you conceive of government as a highly refined daily process of balancing this special interest against that one, of rewarding these factions while punishing those, and all the while skimming millions in campaign contributions to be used to establish and sustain yourself and your friends as lords of personal power fiefdoms. That kind of Willie Brown-style government can never be too Byzantine: every bill is another chance to cut a deal.

WHILE THEY'RE at it, Republicans should dismantle the vast powers of the Speakership. No one should be able to name every member of every com-

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mittee as Brown has done for years, using this power to snake his tentacles into the other party's caucus, sowing dissention and subverting representative government, pitting every member's personal interest against the interests of his constituents. In all the reporting on how "Republicans can't get their act together" and on Jim Brulte's inability to "count to 41," I recall not one mention of this Machiavellian set-up that gave Brown the lever he had to have to work his "magic," as George Skelton quaintly called it. Imagine the media field day we'd see if Speaker Gingrich held such power in Congress (no Congressional Speaker does, by the way) and proceeded to use it flagrantly to bribe the more weak-willed and dumber Democrats into trading votes and loyalties for large office, big staffs, and rides in Gingrich's personal stretch limo to lavish dinners at fashionable, high-priced restaurants. The pathetic thing is that few reporters seem capable even of seeing the least inconsistency or lack of honesty in clubbing Republicans mercilessly on such issues while letting Democrats off with a shrug or a wink or, most of the time, no notice at all.

Materialist and selfish arguments usually heard for freedom are not only false but, even if they were true, would still be weak, especially compared to the really compelling *moral* argument.

BEYOND SUCH reform of the running of the Assembly lie the many broad policy changes required to reverse the transformation of California ever more into a state in which the labor of many is taken to enrich a very few. Those specific changes, many and varied, are a continuing topic in *CPR* and need not be reworked here and now. But some additional broader points might be made. Obviously Assembly Republicans (and Democrats interested in serving all the people) should not operate in a vacuum, but should coordinate not only with Senate Republicans and conservative Democrats under Rob Hurtt's leadership and with the governor (especially on his privatization plans). Above all, the program must be coordinated with the critical reforms Newt Gingrich and Congressional Republicans are trying to make in the nation as a whole. The Willie Brownization of government and the spiritual and material impoverishment it brings to all of us is a national concern. It will be best understood and its reversal most readily supported by the American people if it is attacked and reforms made as a unified campaign at every level.

And a final point: do not be afraid of asking people to make sacrifices. Many Republicans seem to think the only way to convince anyone to support freedom is to argue that it provides a better payoff than socialism — we'll all have more money. First of all, that is not true, at least in the short run. Yes, the population as a whole will be more prosperous, but people don't live or vote as a whole. They live and vote as individuals or families, and individuals and families who receive special favors and monetary subsidies from government (by now there are millions of them everywhere in society) will have to endure change and some measure of hardship in the process of bringing more freedom and self-reliance to California.

Then all is lost, feint-hearted conservatives no doubt will say. No, it is not. Actually, the materialist and selfish arguments usually heard for freedom are not only false but, even if they were true, would still be weak, especially compared to the really compelling *moral* argument: support freedom, even when it hurts, ***because it is right.*** Yes, yes, I know, all hopelessly romantic and naive, but, just for a moment, think about it; consider it, for instance, in terms of an interesting parallel from not very distant history:

> It remains one of the oddities of this war, [Albert Speer wrote in *Inside the Third Reich]* that Hitler demanded far less from his people than Churchill and Roosevelt did from their respective nations .... The German leaders were not disposed to make sacrifices themselves or to ask sacrifices of the people. They tried to keep the morale of the people in the best possible state by concessions. Hitler and the majority of his political followers belonged to the generation who as soldiers had witnessed the Revolution of November 1918 and had never forgotten it .... In order to anticipate any discontent, more effort and money was expended on supplies of consumer goods, on military pensions or compensation to women for the loss of earnings by their men in the services, than in the countries with democratic governments. *Whereas Churchill promised his people only blood, sweat, and tears, all we heard during the various phases and various crises of the war was Hitler's slogan: 'The final victory is certain.'* This was a confession of political weakness. It betrayed a great concern over a loss of popularity ...." *(emphasis added)*

NO VAPID promise of higher wages could have sustained the British and American people through the dark days from 1939 to '43; their knowledge that their cause was just did that. The strength of the Republican cause is no different. Make the moral argument its centerpiece, and the battle will be won. CPR

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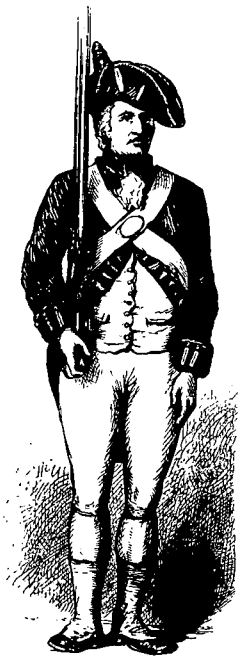

Rejoice!

Teenagers Carry Assault Weapons!

Si Frumkin

I HAVE just returned from what probably is the most heavily armed country in the world. Teenagers, both boys and girls, armed with a variety of assault weapons walk the streets, chat in pizza parlors, shop in crowded department stores, and here and there, standing in line at the supermarket or having a cup of coffee in a sidewalk café, you see the butt of a gun protruding from the pocket or tucked in someone's belt.

No one worries. There are no bumper stickers that explain, "Guns Don't Kill People — People Kill People!" because there is no need for them — the truth is self-evident: guns do not create violence, they are only instruments of violent people.

Si Frumkin is chairman of the Southern California Council of Soviet Jews and editor of Graffiti for Intellectuals, *where this article originally appeared.*

I know that some of the more vociferous proponents of strict gun control laws — Senator Barbara Boxer comes to mind — have been to Israel, the country I am referring to, and that they too have seen the proliferation of arms among citizens of all ages. They saw the soldiers who are drafted at 18 and are inseparable from their Uzis or M-16s for the next three years. It is incomprehensible to me that what they saw does not make them doubt the dogma that guns are responsible for the violence that besets America.

DRIVE-BY SHOOTINGS are unknown in Israel. Senseless and casual murders are extremely rare — the whole country went into shock when several teenagers were arrested and convicted last year of a robbery and murder of a taxi driver, an almost routine occurrence

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in American urban settings. Paradoxically, the sight of teenagers armed with the deadliest state-of-the-art weapons does not cause a sense of alarm, it creates a sense of security, of respect and admiration, I would even say of gratitude and appreciation for all these apple-cheeked, barely-old-enough-to-shave *Yossis* and *Shmuliks,* and all the sandal-shod, hair-ribbon wrapped around the rifle barrels, chattering, smiling, big-eyed, short, tall, and in-between army girls.

I was thinking how good and miraculous it would have been to have these young men and women, and their weapons, on our side 50 years ago when no one cared except the victims.

AT YAD VASHEM I stood, not for the first time, before the record of what violent people can do to those who are less violent and less well-armed. I looked at the photographs of my own ghetto in Kovno, the pictures of a Lithuanian smiling proudly at the camera, leaning on a wooden club. An excerpt from a report by a German army colonel describes him:

> ...On the concrete forecourt of a petrol station a blond man of medium height, aged about twenty-five, stood leaning on a wooden club, resting. The club was as thick as his arm and came up to his chest. At his feet lay about fifteen or twenty dead or dying people. Water flowed continuously from a hose washing blood away into the drainage gully. Just a few steps behind this man some twenty men, guarded by armed civilians, stood waiting for their cruel execution. In response to a cursory wave the next man stepped forward silently and was then beaten to death with the wooden club in the most bestial manner, each blow accompanied by enthusiastic shouts from the audience ... I was told that this was the "Death Dealer of Kovno" at work.

PEOPLE KILL people. People with guns. People with clubs. People with knives. People with murder in their hearts. People like this German colonel, surely a gentleman of the old school who was horrified by the brutality but who didn't think of interceding and stopping the carnage.

As I stood before the picture at Yad VaShem a group of armed teenagers gathered behind me. The Israeli army brings new draftees to the museum, to show them what their guns are meant to prevent from happening again. They were silent, subdued, looking at what was to them ancient history, maybe thinking of the stories their grandparents had told them, maybe just thinking of the date they had later on, or what the army would feed them for dinner.

I know what I was thinking as I stood there, tears in my eyes. I was thinking how good and miraculous it would have been to have these young men and women, and their weapons, on our side 50 years ago when no one cared except the victims. I was thinking how foolish those are who would take the guns away from everyone and hope that this would somehow change the violent for the better instead of just disarming those who would take a stand.

THE MOST heavily armed country — Israel — and probably the second most heavily armed, Switzerland, where every male citizen keeps his army rifle in his house, might be the most safe for the non-violent and non-criminal. The U.S. cities with the most restrictive gun controls regulations — Washington, D.C., New York, Los Angeles — are also the ones where the risk of being murdered is the greatest.

These are the facts, but facts have never stood in the way of convictions sincerely and deeply felt, even when they contradict both facts and common sense. Energy and passion wasted on "Ban the Guns" campaigns would be better used in campaigns to eliminate the violent and murderous among us. CPR

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REASON in the BALANCE

On NATURALISM
America's Established Religion

PHILLIP E. JOHNSON

IS GOD the true creator of everything that exists, or is God a product of the human imagination, real only in the minds of those who believe? This article* is about how people answer that question, and the consequences of answering it one way or another. According to public opinion polls, the vast majority of Americans are *theists,* which means they believe (or at least say they believe) that we

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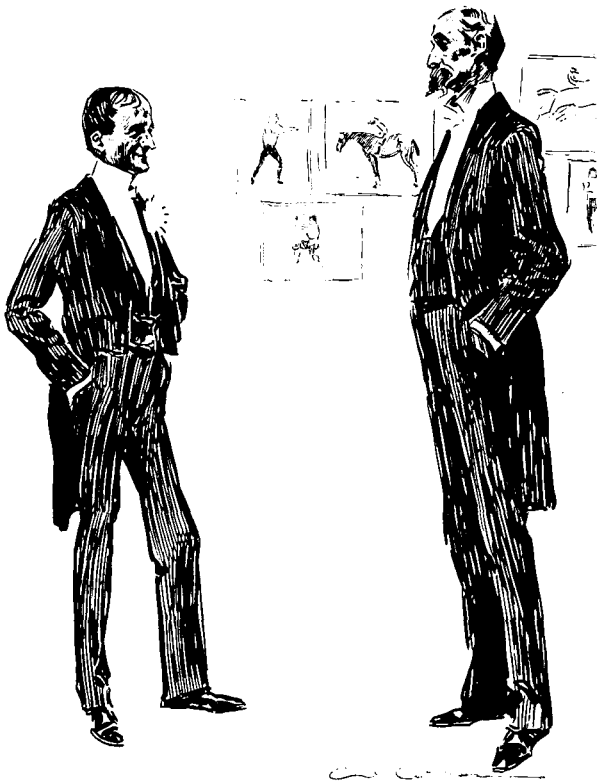

were created by God, a supernatural being who cares about what we do and has a purpose for our lives which is to be fulfilled in eternity. If God really does exist, then to lead a rational life a person has to take account of God and his purposes. A person or a society that ignores the Creator is ignoring the most important part of reality, and to ignore reality is to be irrational. That is why the Bible says the fear of the Lord is the beginning of wisdom.

The most influential intellectuals in America and around the world are mostly *naturalists*, who assume that God exists only as an idea in the minds of religious believers. In our greatest universities, naturalism — the doctrine that nature is "all there is" — is the virtually unquestioned assumption that underlies not only natural science but intellectual work of all kinds. If naturalism is true, then humankind created God — not the other way around. In that case, rationality requires that we recognize the Creator as the imaginary being he always has been, and that we rely only on things that are real, such as ourselves and the material world of nature. Reliance on the guidance of an imaginary supernatural being is called superstition.

THIS DOCTRINE that nature is "all there is" is the metaphysical position that underlies not only contemporary science but the humanities and the so-called social sciences as well, a situation bearing powerful implications for our culture. The United States does not have an established church, but it does have (and always has had) an established religion, or at least a dominant religious philosophy, an established way of thinking about religion. For our purposes here, ***religion*** may be defined as a way of thinking about ultimate questions. A person's religion answers questions such as how and why we (and everything else) came into existence, whether the purpose of life has been established by a Creator or is up to us to decide, and how we can have reliable knowledge about the world and about ourselves. The officially recognized answers to these questions make up a society's established religious philosophy, its culturally dominant way of thinking about religious topics.

There is nothing sinister or inherently unconstitutional about the existence of a *de facto* established public philosophy on religious questions. The philosophy is established not in the sense that it is formally enacted or that dissenters are subject to legal punishment, but in the sense that it provides a philosophical basis for lawmaking and public education. The content of the established philosophy may be controversial and change over time, but something of the kind must necessarily exist or government will become incoherent and even chaotic.

The "establishment," in this sense, of a particular religious philosophy relegates competing philosophies to a marginal position in private life. The marginalization is most effective when formal government actions are supplemented by a variety of intimidating acts by non-governmental institutions such as the news media. The media uproar a few years ago surrounding the "creationist" policies of the locally-elected school board in San Diego County provides a good example.

Before 1989, the California State Board of Education's official policy forbade the "dogmatic" teaching of any scientific theory, a stance that in context discouraged textbook publishers from giving as much emphasis to evolution as many science educators thought appropriate. In 1989 the science educators persuaded the state board to adopt a new policy statement on the teaching of science. Without explicitly mentioning evolution, this policy encouraged textbook publishers and teachers to give much greater emphasis to accepted scientific doctrines and to relegate any scientific consideration of non-scientific subjects such as divine creation, ultimate purposes, and the ultimate cause of the physical universe to literature and social studies classes.

When a majority of conservative Christians won election to the Vista District school board, they took language directly from the 1989 state policy statement and employed it in their own local policy, which provided that "discussions of divine creation, ultimate purposes, or ultimate causes shall be included at ap-

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propriate times in the history-social sciences and/or English-language arts curricula" (but not in science classes). The new local policy mandated "exploration and dialogue" of "scientific evidence that challenges any theory in science" and stated that "no student shall be compelled to believe or accept any theory presented in the curriculum."

The Vista policy seemed on its face to comply with the state guidelines, and a representative of the state board acknowledged that there would be a conflict only if the local policy in practice was used to promote Christianity instead of giving equal treatment to all religious viewpoints. In fact, the board faced so much hostility from the teachers' unions that the policy had little effect. Nonetheless, press, radio and television accounts of the controversy continually portrayed the Vista policy as defying the state guidelines and as a covert attempt to evade constitutional standards by introducing biblical creationism (which was not mentioned in the local policy) "through the back door."

THE BASIS for this portrayal was that the local board members were known to be sympathetic to the creationist viewpoint and hence must have been motivated by a desire to get that viewpoint taken seriously. The prospect that they might succeed was so alarming to the defenders of modernism that national and even international media took an intense interest in this local controversy. The influential *Los Angeles Times* mounted a campaign in its editorial and news columns, and vigorous editorial denunciations of the Vista board came from as far away as London. As the historian Ronald Numbers put it in his book *The Creationists,* the attitude of the educational elites toward creationism can be summed up as "We've got to stop these bastards!" In this case the campaign succeeded, and the offending school board members were defeated at the next election.

The elite attitude examined by Numbers is a clear sign that modernist culture finds creationism — as distinguished from, say, the New Age mysticism of a Shirley MacLaine — genuinely threatening. The problem is not with the detailed Genesis literalism of the fundamentalists, which is relatively easy to marginalize, but with the broader doctrine that, one way or another, God brought about our existence for a purpose and cares about what we do. The vast majority of Americans at least say that they believe in such a God, and if that belief were to emerge as a serious contender at the intellectual level, there could be important consequences. If God is more than a myth or a figure of speech, then modernist culture is ignoring something really important, and its ruling philosophy may be in serious trouble.

Modernist discourse incorporates semantic devices — such as labeling theism 'religion' and naturalism 'science' — that work to prevent a dangerous debate from breaking out.

On the other hand, defenders of modernism cannot openly ban the advocacy of theism without contradicting their own commitment to freedom of expression and unfettered intellectual inquiry. Modernist discourse accordingly incorporates semantic devices — such as the labeling of theism as "religion" and naturalism as "science" — that work to prevent a dangerous debate over fundamental assumptions from breaking out in the open. These devices, however, become transparent under the close inspection that an open debate tends to encourage. The best defense for modernist naturalism is to make sure the debate does not occur.

It would be inadequate and misleading, however, to account for modernist rule as if it were a kind of plot by agnostics to rule the United States by employing deceptive techniques. Modernism is not a conspiracy, but a way of thinking that is taken for granted not only by agnostics but also by millions of people who consider themselves theists but have to some extent adopted modernist ways of thinking about theism. In fact, the authority of modernism rests largely on theists' tacit acceptance of modernist premises. It is possible to make so strong a case for modernism that it may seem futile and self-destructive for theists to challenge modernism as a public philosophy.

The Advantages of Modernism

I believe that the case for modernism can be answered convincingly, but the case that has to be answered is a powerful one, and it will not do to underestimate the difficulty of the task. There are at least five reasons that advocates of modernist naturalism can (and do) give to justify their right to rule, and I will state them as persuasively as I can.

1. Modernism's metaphysical foundation rests firmly on scientific naturalism, which is "the way things really are." Through science we now know that nature, of which we are a recently evolved part, really is a closed system of material causes and effects, whether we like it or not. Any other system — partic-

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ularly one based on the supposed commandments of a supernatural being — would therefore be founded on illusion rather than reality. God is a product of the human imagination, not the Creator of us all. Once science has established the facts, we have eaten the fruit of the tree of knowledge and there is no going back to pre-scientific beliefs, however great a sense of loss some of us may feel.

2. Modernist naturalism is equivalent to rationality because it excludes consideration of miracles, defined as arbitrary breaks in the chain of material causes and effects. This argument is particularly important to scientists, who see the success of science as inextricably linked to the presumption that no supernatural mind or spirit ever interferes with the orderly (but purposeless) course of natural events. Most modernists' identification of naturalism with rationality is so complete that they do not think of naturalism as a distinct and controversial metaphysical doctrine, but simply assume it is part of the definition of *reason.*

I am convinced that God is objectively real, not merely a concept or fantasy in my own mind. This is a shocking proposition to many people, including many churchgoers.

3. Modernist naturalism is liberating especially in the area of gender roles and sexual behavior, because it frees people from the illusion that outdated cultural norms have permanent validity as commands of God. Persons who attack scientific naturalism or the theory of evolution probably do so as part of a disguised agenda to re-establish a stifling patriarchal code of sexual behavior. I have found that any discussion with modernists about the weakness of the theory of evolution quickly turns into a discussion of politics, particularly sexual politics. Modernists typically fear that any discrediting of naturalistic evolution will end in women being sent to the kitchen, gays to the closet, and abortionists to jail. That kind of consideration explains why any perceived attempt to undermine the teaching of evolution as fact in the schools is met with such fierce opposition; much more than a scientific theory is deemed to be at stake.

4. Modernist naturalism supplies the philosophical basis for democratic liberty, because it relies only on knowledge that is in principle available to every citizen. Modernists characterize persons who wish to make public policy on the basis of some divine revelation as inherently undemocratic, because they assert authority on the basis of a knowledge that has been revealed only to them and hence is not available to others. In contrast, the observations and methods of reasoning employed by science are universally accessible in principle, although in reality the special study (and funding) required to practice science limits citizens' ability to judge scientific questions for themselves. If public debate is carried out only on the basis of knowledge derived from sensory experience and scientific investigation, then in principle everyone can participate on equal terms. Modernists think debates between competing supernaturalistic ideologies can be settled only by force, whereas debate on naturalistic principles is open to reason and hence to peaceful solution.

5. Finally, modernist government is acceptable even to many religious people, including Christian theists of relatively high intellectual standing. Modernism is not inherently anti-religious or even anti-theist, provided that "belief in God" is relegated to its proper place in private life. Under liberal rationalist principles of tolerance, believers may have their own churches and may even send their children to private religious schools if they can afford to do so — provided that they do not attempt to force their beliefs on other people by seeking, for example, to advocate them in the public schools. Modernists think that this is as much authority as believers with a proper respect for the autonomy of non-believers should want. The restriction of religion to private life therefore does not threaten the vital interests of the majority religion, and it positively protects minority religions from the tyranny of the majority.

The tacit understanding that religion has to do with subjective feelings rather than objective facts allows scientific naturalists to exempt religion from all-out scientific scrutiny; thus modernism compassionately protects the cherished illusions of religious believers. Modernists warn Christian theists who want to dispute naturalism in the public arena that they are making a big mistake and are inviting a conflict with science that they cannot win. As the example of creationism illustrates, modernist tolerance stops at the point where the religious people start demanding that public institutions treat their subjective beliefs as if they might possibly be objectively true.

Theistic Realism

That is a formidable list of advantages and justifications, but in the end everything depends on the first argument: the God of Christian theism and of the

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Bible is unreal, the product of a pre-scientific human imagination. Grant that premise, and everything else follows. But reject that premise, and everything on the list becomes doubtful.

Of course a social order should be founded on reality and not unreality, but if God exists, a naturalistic order is founded on unreality and naturalistic rationalism is an illusion.

Of course science likes to assume that the cosmos is rationally understandable and not arbitrary, but how better to guarantee a rational cosmos than to recognize that it was created by a rational mind? If such a Creator really does exist, than science itself is ignoring the most important aspect of reality.

Of course people should be freed from arbitrary restrictions, but if the supposedly arbitrary restrictions are in reality necessary to restrain our irrational passions, we can expect to get something other than freedom when we abolish them. We should also expect something other than rational government when the governors break their connection to the source of reason.

Finally, if God is real, than those theists who meekly accept their assigned place in the naturalistic order of things may be like sailors who choose not to disturb the captain by informing him that the ship is about to sink. It may be rational to argue about whether God is real or unreal, but it is clearly irrational to assume that a God who is real can safely be ignored.

I am not a modernist; a modernist would call me a "religious believer," but I call myself a theistic realist. The term signifies that I am convinced that God is objectively real, not merely a concept or fantasy in my own mind. This is a shocking proposition to many people, including many churchgoers and professional clergy. I have been told by many modernists that to assert the reality of God as Creator is dogmatic and arrogant, since it is to imply that I have knowledge that is unavailable to scientific naturalists. Modernists do not think it arrogant to declare that "evolution is a fact," although the statement seems to imply that creationists are wrong. That is because in their metaphysics, naturalistic evolution falls in the category of scientific knowledge, whereas creation is a matter of religious faith.

Culture War or Democratic Debate?

In the battle between creationists and evolutionists, the perception in elite intellectual circles is that there is nothing to discuss and no possibility of compromise. The creationists (supposedly) reject science and therefore reject reason and will never be content until they can impose their beliefs on everybody else. There is nothing to do but to fight a cultural war, and no terms to offer short of unconditional surrender. If creationists offer moderate-sounding arguments, they are merely disguising their true purpose, and if creationist parents run for election to a school board, they

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are waging a "stealth campaign" and deceitfully speaking in places like churches, where they can hide from intelligent scrutiny.

WHEN THE people with the most cultural influence see society as divided between the party of rationality and goodness on one side and the party of irrationality and oppression on the other, the state is set for a culture war. The way out of the culture wars and back to normal democratic conflict requires that the issues that really concern people no longer be ruled out of bounds with pejorative labels like *religion* and *phobia*. What it takes to accomplish this is mainly a willingness to deal with adversaries as the complex human beings they are rather than as cardboard stereotypes. It also takes a little moral courage, but there are those whose example may suggest some ways to escape from the fruitless name-calling of the culture wars.

James Carper and James Sears are both professors in the College of Education at the University of South Carolina. Sears describes himself as "agnostic progressive" and an out-of-the-closet homosexual, author of a book titled *Growing Up Gay in the South*. He attracted statewide attention by agreeing to sponsor a graduate-level summer course called "Christian Fundamentalism and Public Education." The announcement said that the course would "assist school practitioners and others in understanding the fundamentalist phenomenon, and combatting its challenge to public education in a secular democracy." That is the language of cultural warfare, of course. The subtext was that "fundamentalists" — a term broad enough to apply in practice to anyone who believes in God and accepts biblical standards of morality — are by definition enemies of democracy and public education. They should be "understood" in the sense that J. Edgar Hoover would have encouraged good Americans to understand the communists, in order to "combat" their insidious influence more effectively. That the millions of Christian parents dissatisfied with current notions of "public education in a secular democracy" might be right about something did not seem to be on the agenda.

Some of the people to be combatted understandably objected to having their tax money used for this purpose and saw the Sears course as a challenge to battle in the culture wars. The protesters approached Carper, a prominent evangelical Christian, to join a letter-writing campaign. Carper responded that he wasn't going to write to anybody. "I told them the best thing to do when there's someone with whom you have a grievance or grudge is to go to that individual personally before you start yelling at department heads, deans, trustees, and the president of the university." So when Carper happened to meet Sears in a grocery store, he arranged to meet with him to discuss the content of the course.

The meeting went very differently from what might have been imagined. Sears admitted that the course announcement was poorly worded and explained to Carper that he had meant the fundamentalists should be combatted only when they were trying to accomplish something unconstitutional. Sears's partial retreat had a subtext. It was that "when I meet a real 'fundamentalist' instead of a cardboard stereotype, I cannot in good conscience say to the man that he does not have a point of view worth considering." Moreover, Sears recognized that he had a political problem and that he needed help in solving it. To Carper's surprise, Sears asked for his help in compiling a reading list and a slate of speakers who could represent both sides of the issue. The effect was rather as if an evolutionary biology professor had requested a creationist to submit a list of respected scholars on "both sides" of the evolution-creation dispute. Because the party line is that on that dispute there is only one side, to which all rational people belong, such an invitation would be very significant.

Carper did provide the list of books and speakers, and Sears took his suggestions seriously. The result was a very successful course, at which the guest speakers represented organizations as diverse as James Dobson's Focus on the Family and Norman Lear's People for the American Way. It must have been a great experience for the students.

DOES SCIENCE prove naturalism, or does it merely assume it? Does the scientific community, represented by the National Academy of Sciences, see it as part of its mission to convince the public that naturalism is true? Has the metaphysical basis for traditional morality been destroyed by scientific discoveries? An enormous effort has gone into evading and burying those questions; it is time they be honestly addressed.

Addressing the metaphysical questions honestly will not heat up the culture wars, but rather tend to make them a part of the normal political and intellectual debate that characterizes a free and pluralistic society. What infuriates people is not disagreement but the subtext of contempt that necessarily accompanies the pronouncements of a ruling intellectual establishment whose power is based on a secret it is unwilling to disclose. If science now teaches that naturalism is true, and if science is unimpeachable, then theists ought to face the consequences instead of pretending that they can go on as if nothing had happened. But maybe naturalism is false. It seems that the rulers of science are terrified at the prospect of having to address that possibility. CPR

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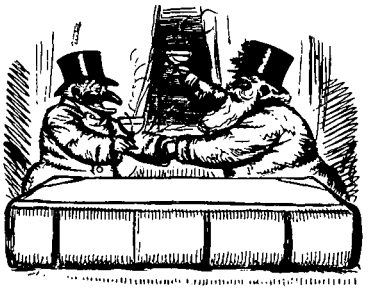

CRITICUS

Monastic Delights

BY JOHN KURZWEIL

G. B. Tennyson, whose column normally appears in this space, is on vacation. He will return next issue.

IN 529 St. Benedict and a few followers climbed the mountain at Cassinum, Italy, destroyed the temple of Apollo they found there, and established the monastery of Monte Cassino. It is unrecorded, but may safely be assumed that the pagan Romans objected but little, preoccupied as they were just then, down below, fleeing the twin onslaughts of the Gothic King Totila's rampaging hordes (which within a few years captured Rome and drove out every inhabitant with much pillage and mayhem) and, at the same time, those of the Roman General Belisarius, whose eventual re-conquest of the Imperial capital involved a campaign so thoroughly destructive that Gibbon remarked of it: "the deliverance of Rome was the last calamity of the Roman people." No doubt aware of the desperate circumstances afflicting many souls in such times, Benedict decreed that any wayfarer entering Monte Cassino with the intention of "sharing" the life lived there should be made welcome whether able or not to pay room and board.

The Benedictines' traditional generous hospitality, thus nobly established, has continued down the centuries. Weary Californians reminded of Totila and Belisarius by the irksome hordes of Willie Browns and Doris Allens rampaging in *our* times, may also repair to a Benedictine abbey — St. Andrew's, in Valyermo, California — and be similarly soothed and restored, especially the last full weekend of September each year when St. Andrew's monks host their annual Valyermo Fall Festival, now in its 38th year. Though the cities lie in ruins outside and learning and culture be dead, here, as at Monte Cassino a millennium and a half ago, there is a refuge not only of peace, but also of religion, art, letters, science, and craft. The monks continue in their age-old role of quietly defeating, by outlasting, the periodic dark ages of the world.

GEORGE TENNYSON'S Constant Readers will recall a stretch of high desert highway called "Pearblossom" that follows the foot of the San Gabriel mountains' north slope in Southern California, north-east of Los Angeles. This is the road to Valyermo, past innumerable outlets for chicken-fried steak and gooey potatoes and Mexican restaurants with names like "Dino's." At Fall Festival time it leads to a perhaps

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surprising mix of gourmet food, distinctive crafts, dixieland jazz, classical guitar, modern dance, barbequed ribs, country-western hoe-down, fine wine and good beer, all provided courtesy of St. Benedict's current followers at St. Andrew's. Income from the two-day festival plays a major role in sustaining the monastery the rest of the year. Admission is free, and the food and drink are worth their moderate cost.

A Festival centerpiece is "Café Continental" which this year, for the first time, alternated Richard Morgan's hard-driving Paradise Cove [Dixie] Jazz Band with equally lively, but more sedate, classical guitar, operatic singers (including a highly enjoyable set with Dan Grimm singing and his brother Stephen accompanying on piano), popular songs, and even a traditional Irish band. Although all the performers are volunteers for the weekend, this is no amateur showcase. For instance, the seven-piece Paradise Cove band (trumpet, trombone, reeds, female vocalist, guitar/banjo, string base, and drums) features long-time veteran jazz musicians and singers. They provided a joyful harmony of musical artistry and delightful entertainment through the afternoon and into the evening.

THE LIGHT-HEARTED atmosphere and enthusiastic audiences reminded me of the Old Sacramento Memorial Day Jazz Festival in its early days, before the soaring crowds and roaring prices choked off most of the fun. The band had the effect of lengthening this year's festivities: Benedictine Father Vincent Martin, Café Continental's director, remarked it was the first time he could remember that the setting sun did not signal a general migration of festival-goers to the parking lots.

AS ENTICING as Café Continental's music was its food: poached salmon with dill sauce, hickory-smoked breast of turkey, vegetarian pasta, wonderful salads, elegant desserts, and fine wines and beers from around the world. Also, a new offering this year, the Festival's Tea Garden featured authentic Korean Barbeque — bulgogi, kalbi, and oriental salad — that proved so popular supplies ran out and eager customers had to be turned away.

Evidently, the 38th edition of the Fall Festival (my first, so I cannot make the comparison from direct experience) significantly surpassed its predecessors in the size and staying-power of its crowds, the variety and quality of its offerings, and the sheer good feeling everywhere apparent. So much so that a pleasantly stunned Father Vincent (who, having presided as well at Festival *numero uno*, knows what he is talking about) expressed his gratitude to the assembled cooks, artists, craftsmen, entertainers, parking-control volunteers, and multifarious well-wishers gathered at the Café when things finally wound down Sunday night saying simply: "You have made a miracle."

Refugee Romans fleeing their Last Calamity must have thought such thoughts at Monte Cassino. CPR

BOOK REVIEW

The Losers' Revenge

BY DAVID F. FAUSTMAN

When a man's work becomes a standard for the whole world, it also becomes a target for the shafts of the envious few.

— Cadillac Advertisement, 1914

THE PROWESS of the American pop-culture propaganda machine is epitomized by its success in having the 1980s indelibly labeled "the decade of greed." On the merits, this disparaging characterization of a decade of almost unprecedented and widely shared economic expansion is little more than bumper sticker demagoguery. Yet, in the mid-1990s, the supposed "excesses of the '80s" are still mindlessly cited in the popular press as the explanation for numerous economic "problems" and as the justification for numerous, nonsensical, government-inspired

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"solutions." One need only listen to the socialist pandering of Bill Clinton and Robert Reich to conclude that disingenuous "greed bashing" is an accepted rhetorical exercise at the highest levels.

FRIEDERICH HAYEK warned in the 1940s that we had slipped into "a world in which in school and press the spirit of commercial enterprise [is] represented as disreputable, and the making of profit as immoral." Hayek realized that socialist ideology relies on base envy, and that the hypocrisy of socialism leads to the posture that "to employ a hundred people is ... exploitation but to command the same number [is] honorable." Socialists have always equated capitalism with "greed." It is indeed amazing that during the 1980s, when world-wide communism collapsed, the politics of envy advanced in America. Such politics led to the downfall of Michael Milken.

Dan Fischel's book about the persecution and prosecution of Milken begins by lamenting: "How ironic, in the decade of capitalism's greatest triumph, that so many have mindlessly adopted the now discredited anti-capitalist rhetoric of failed economic systems in describing what happened in America as 'the decade of greed.'" Fischel, with impeccable credentials in law and economics from the University of Chicago, reminds us, as did Hayek, that the real purpose of anti-greed rhetoric is to tear down the achievements of risk-takers. "The attack on financiers and Wall Street 'excesses' during the 1980s is a ... virulent example of greed bashing rhetoric to discredit and de-legitimize *[sic]* the success of others."

The attack on financiers in the 1980s, however, was more than just rhetorical. The rhetoric became the philosophical justification for a witch hunt of unprecedented ferocity. "It is easier," Fischel writes, "to believe that financiers' success is attributable to their corruption and venality rather than to their superior ability and willingness to take risks. That 'speculation' was a crime in Communist Russia was clearly no accident .... Criminalization is also popular with the public because it cloaks envy with self respect."

Thus, did a government gone crazy conspire to put Mike Milken in jail. Utilizing "ambitious but unscrupulous prosecutors" who "capitalized on the public's historic distrust and envy of financiers," the government instituted a "reign of terror" by changing the rules in the middle of the game, criminalizing harmless trading practices, and engaging in "questionable ethical practices as it pursued victory at any cost." The government also created and exacerbated the savings and loan crisis, and then sought disingenuously to blame the mess on Michael Milken. By snuffing out Drexel, the government destroyed what was at the time the primary source of capital for many of America's most innovative companies. This action also created a more general liquidity problem that worsened the impending recession. Fischel opines that "not since the time of McCarthyism ... has the government behaved so badly."

PAYBACK
The Conspiracy to Destroy Michael Milken and His Financial Revolution
by Daniel Fischel
Harper Collins, 1995, 305 pages, $25, cloth

Corporate Restructuring

During the 1980s, American business became more competitive, more able to employ successfully scores of millions of its citizens who, in the 1990s and beyond, must compete in a global economy. This phenomenon, though inevitable in one way or another, did not occur by accident. Conscious innovation in the financial markets and new methods of capital formation were necessary for the constructive reshaping of American industry. "The investment banking firm of Drexel Burnham Lambert and its star employee, Michael Milken, were at the center of the financial innovations and corporate restructuring that dominated the decade." The financial revolution brought about by the legitimate utilization of the high yield (a.k.a. "junk") bond, a debt instrument refined by Milken and Drexel, "produced powerful dislocations." The losers included old line Wall Street firms and the corporate establishment which had become fat, dumb, and happy (*i.e.*, inefficient and undervalued) under the *status quo*. The dislocation produced a powerful backlash:

> [T]he management establishment, together with the displaced investment banks and other opponents of change such as labor unions, formed a powerful interest group dedicated to waging holy war against Drexel, Milken and the other players in the restructuring revolution that was threatening their very existence.

The American press helped the crusade by "de-legitimizing *[sic]* the financial innovations of the 1980s" and "spreading the fundamental misimpression that financial markets ... were permeated by fraud and criminality." This gave the government "*carte blanche* to do whatever it wanted." What it wanted, above all else, was Milken's scalp. "Milken, who should be

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viewed as the ultimate personification of the American dream, is instead today a convicted felon."

The Persecution of Milken

Though the hunt for Michael Milken was cloaked in rhetoric about "restoring investor confidence," the true motive was political. There is no evidence whatsoever that investor "confidence" ever lagged. The government's imperative was to preserve bloated corporations from restructuring pressure by stopping the wave of take-overs and the Drexel bonds that financed it. Insiders like Felix Rohatyn and Nicholas Brady, whose Wall Street investment firms had been left in the dust by Drexel, were out for revenge. Fischel documents how the anti-takeover hysteria was fueled by Wall Street lawyer Martin Lipton "who became phenomenally wealthy" defending entrenched management, and who engaged in a "rhetorical strategy" that "combined breathless hyperbole with repetition of virtually every economic fallacy ever uttered about restructurings." Even John Shad, Ronald Reagan's chairman of the SEC, became swept up in the disingenuous handwringing about the "leveraging of America." Unscrupulous and ambitious prosecutors like Rudy Giuliani were more than happy to oblige.

THE PERSECUTION of Milken would have been incomplete without the *prosecution* of Milken. The government had to invent crimes, to "criminalize regulatory offenses" that had never before been prosecuted criminally. "Insider trading" and "stock parking," common and understandable market practices according to Fischel, became the vehicles to nail Milken.

> Routine trading practices were suddenly redefined as criminal, blurring the line between permissible and impermissible activity. The government reveled in sensationalized prosecutions challenging actions that harmed nobody and were either innocuous or economically beneficial to investors.

Why, then, did Milken plead guilty, to be forever labeled a convicted felon? In hindsight, the government's case against Milken, like many others of the time, might have been thrown out by the appellate courts. But that was a very large "might." At the time, Milken had been ignominiously abandoned by Drexel which had been bludgeoned into pleading guilty by Judge Milton Pollock, clearly one of the lesser lights in the federal judiciary. The government had dropped the RICO bomb on Milken and his assets, and, in order to create plea bargaining leverage, had indicted his younger brother on the flimsiest of evidence. These despicable tactics amounted to huge abuses of prosecutorial discretion, and created insurmountable pressure on Milken to plead guilty and settle up. Milken was able to save some of his fortune, and keep his brother out of jail. Ultimately, Kimba Wood, the federal judge who had ridiculously opined that Milken had caused the savings and loan crisis when sentencing him to 10 years in jail, came to her senses and reduced that sentence to two years. If Milken, now a free man, is able to beat the prostate cancer that developed while he was under the undoubtedly fine medical care of federal authorities, he will be able to enjoy a few years of peace with his children. Milken has now renewed his efforts in California to leave a legacy of humanitarian philanthropy.

The Lesson

In the 1980s, "the losers in the marketplace went to the government for help," and the government "formed an alliance with the losers" to "attack the winners" by regulation and prosecution, rather than allowing "the financial revolution to run its course." The press "became a tool of the government's prosecutorial efforts and propaganda campaign." Federal judges fell for it. Prosecutors and regulators behaved dishonorably and hypocritically.

> [Those] who were most responsible for the abuse left the government in droves for higher paying positions in the defense bar [to] peddle their skills as former insiders to the targets of the next generation of prosecutors and regulators [and] had no problem making the transition from denouncing "greed" ... to focusing instead on how much money they could now make.

THE PRIVATE legal profession was "another villain in the story." That the venerable Wall Street firm of Cravath, Swain & Moore became contingency fee counsel for the government, and blamed Milken and Drexel for the government-created savings and loan debacle, "was a joke." "The suit brought by a law firm that itself had prospered from the financial innovations of the 1980s was more fraudulent than anything about the high yield bond market."

We should be ashamed of what was done to Michael Milken — and afraid, for if they can do it to Milken, they can do it to anyone. Fischel concludes: "The main lesson is the need to be vigilant to guard against the arbitrary exercise of power by government against those who are unpopular because they threaten the economic establishment."

Our children and grandchildren should heed the lesson of this book. Mike Milken's children and grandchildren should read this book and be proud. CPR

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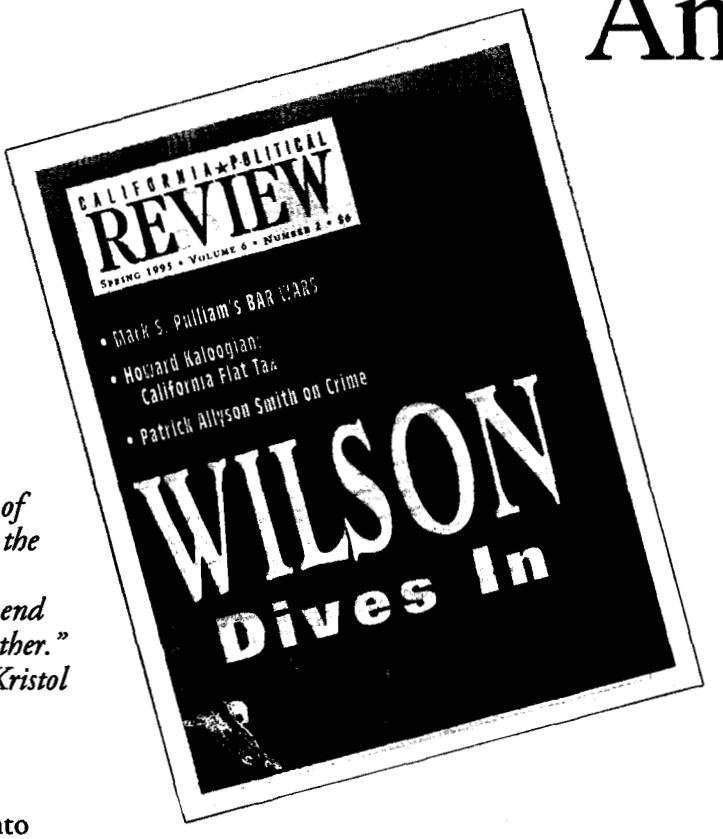
An Opening for Common Sense



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— Irving Kristol

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Both California juries said "not guilty" ...but O.J. Simpson is a free man, while Larry Powell has been in prison for 2 years. Now the Supreme Court could change that to 4 more. ***Rally for an officer who did his duty as asked.***

Every dollar raised pays $2 of his legal bills-- help us meet this challenge upon his release from prison on Dec. 13...

The Officer Laurence Powell HOMECOMING DINNER & RALLY

Thursday, December 14, 1995

6 PM Reception, 7:30 PM Dinner, at the Academy Club, Los Angeles Police Academy
1880 North Academy Club, near Dodger Stadium

Confirmed Speakers include Supervisor Mike Antonovich, Congressmen Buck McKeon & William Dannemeyer (Ret.), Laurence Powell's dad, Lt. Ed Powell; Larry's attorney, Michael Stone; Ezola Foster, Founder & President, Black Americans for Family Values, Richard A. Delgaudio, President, Legal Affairs Council (from Washington, DC area), Rev. William Murray, and Guest of Honor, Larry Powell

Challenge: Here is a chance to stand up for right, for an Officer who did his duty and has been unfairly targeted. As Janet Reno's Justice Department works to extend Officer Larry Powell's time in prison, the release date is set for December 13. Sadly, even after massive support from brother police officers in Los Angeles and around the nation, Larry still faces a crippling debt from his legal defense. Thankfully, his dedicated attorney has volunteered to give a generous "Homecoming discount" on his old bill if the final $50,000 is paid off by Larry's release date. *Can we raise $50,000 in time?* Now, the conservative legal aid group, Legal Affairs Council (LAC) has answered the call for help, pledging to match everything raised at this Homecoming Dinner & Rally, dollar for dollar, to pay off the last of the $50,000 old debt and give Larry Powell a new start in life. ***Will you help?***

Every dollar you can contribute will pay off a total of $2 of Larry's old legal defense debt. Your $100 pays off $200 in legal bills, etc. With LAC's help, the June, 1995 reception/dinner raised over $20,000. Now, will you help pay off the final $50,000?

THE OFFICER LAURENCE POWELL HOMECOMING COMMITTEE
(titles for identification only)

Committee Chairman:
Mike Antonovich, L.A. County Bd. of Supervisors

•

Hon. Edwin Meese, former U.S. Atty. General
U.S. Congressman Buck McKeon
former U.S. Congressman William Dannemeyer
State Senator Richard Mountjoy
State Senator Don Rogers
State Senator Newton Russell
Assemblyman Howard Kaloogian

•

Ezola Foster, Founder/President, Black Americans for Family Values
Cynthia Brown, Editor, American Police Beat
Ed Nowicki, Founder, American Association of Law Enforcement Trainers
Randy Keenum, President, Alabama Police Benevolent Assoc.
John T. Hill, President, Middleton, NJ Fraternal Order of Police
Jeff Huss, President, Orange County, CA Police Canine Assoc.
(Laurence Powell's official defense fund trustee is his dad, Lt. Ed Powell)

Project Chairman: **Tom Marchetti**, LAPD

Homecoming Dinner & Rally for Officer Laurence Powell ● sponsored by Officer Laurence Powell Emergency Assistance Fund ● project of
Legal Affairs Council ● President: Richard A. Delgaudio
Freedom Center ● 3554 Chain Bridge Road, Suite 301 ● Fairfax, VA 22030
(703) 591-7767
William Saracino, California Coordinator ● John Stoos, West Coast Representative
Lynn Bryan, Event Coordinator ● Sergio Picchio, Dinner Steering Committee Chairman

for further information (local) 818/577-7203
do not mail RSVP Form after 12/8 but bring it with you to the reception and call in your RSVP at the phone number above. 1214FLY.L95

RSVP FORM

Officer Laurence Powell (LAPD), Homecoming Dinner & Rally
8391 Beverly Blvd., #380 Dept. PEM ● Los Angeles, CA 90048

☑ Yes I'll help pay off $50,000 in old legal bills for Officer Laurence Powell, LAPD. I understand every dollar you raise before Larry's homecoming, will be matched, up to the $25,000 needed, by Legal Affairs Council (*Friend* listing & 2 tix is $150). I enclose:

☐ $50 - Reception & Dinner
☐ $100 - Friend* *(includes Program listing)*
☐ $250 - Sponsor* *(includes Program listing)*
☐ $500 - Patron* *(Program listing & special seating)*
☐ I can not attend although I have checked one of the boxes above & have enclosed a check.
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☑ total amount enclosed $_____ for____ tickets.
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☐ Mr. ☐ Mrs. ☐ Ms.
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HELP! We especially appreciate your help in getting the word out about this event to LAPD Officers and other friends. We have no other way of getting the word out except your help. Please reproduce this flyer, thank you.

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